

1 CHRISTOPHER BURKE, ESQ.  
702 Plumas St.  
2 Reno, Nevada 89509  
Nevada Bar Number 4093  
3 (775) 333-9277  
attycburke@charter.net

4 MICHAEL LEHNERS, ESQ.  
429 Marsh Ave.  
5 Reno, Nevada 89509  
Nevada Bar Number 003331  
6 (775) 786-1695  
7 email michaellehners@yahoo.com  
Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 oOo

11 MERCEDES URBINA, on behalf of  
herself individually and all others similarly  
12 situated

Case No. 3:17-cv-00385-WGC

13 PLAINTIFF'S FIRST AMENDED  
COMPLAINT

Plaintiff

14 vs.

(Proposed)

15 NATIONAL BUSINESS FACTORS,  
INC.,

16 Defendant  
17 \_\_\_\_\_/

18 Plaintiff, Mercedes Urbina, files this First Amended Complaint for damages and  
19 incidental relief against Defendant, National Business Factors, Inc., ("NBF") and alleges the  
20 following:

21 **INTRODUCTION**

22 1. On or about December 17, 2013 Ms. Urbina signed a contract for medical  
23 services with Tahoe Fracture Clinic. The contract provided in relevant part that "*I understand*  
24 *that I am financially responsible for all charges whether or not paid by said insurance. I hereby*  
25 *authorize said assignee to release all information necessary to secure payment.*"

26 2. On or about August 24, 2015 Ms. Urbina signed a second contract for medical  
27 services with Tahoe Fracture Clinic. It contained the same language as the December 17, 2013  
28 contract.

1           3.       Neither contract provided for the payment of a definite sum of money.

2           4.       The value of performance to be rendered under the contract was not stated nor  
3 was it ascertainable by mathematical calculation from a standard fixed in the contract or from  
4 established market prices.

5           5.       On or about September 23, 2016 Tahoe Fracture Clinic sent Ms. Urbina an  
6 Explanation of Benefits ("EOB").

7           6.       Tahoe Fracture Clinic's EOB, is a book account, in that it is a detailed  
8 statement which constitutes the principal record of one or more transactions between a debtor  
9 and a creditor arising out of a contract. It shows the debits and credits in connection with that  
10 contract and in favor of whom entries are made. It is also entered in the regular course of  
11 business as conducted by such creditor, and it is kept in a reasonably permanent form and  
12 manner. It is also kept by Tahoe Fracture Clinic in a reasonably permanent form and manner

13           7.       As of September 23, 2016 Ms. Urbina was 120 days past due on her book  
14 account with Tahoe Fracture Clinic in the amount of \$571.00.

15           8.       As of September 23, 2016 Ms. Urbina was 60 days past due on her book  
16 account with Tahoe Fracture Clinic in the amount of \$42.99.

17           9.       Ms. Urbina made four \$30.00 payments to Tahoe Fracture Clinic. The first  
18 was made on February 26, 2016. The second was paid on March 13, 2016. The third  
19 payment was made on April 29, 2016, and the fourth and final payment was made on August  
20 12, 2016<sup>1</sup>.

21           10.      During the course of Ms. Urbina's treatment, she was never charged any  
22 interest on her contract by Tahoe Fracture Clinic.

23           11.      On January 5, 2017 NBF sent Ms. Urbina a collection letter that demanded the  
24 principal of \$614.52 plus \$29.07 of interest for a total of \$643.59.

25           12.      NBF has admitted that after assignment of the account by Tahoe Fracture  
26 Clinic, it calculated interest on the balance due from the date it alleges is Ms. Urbina's last  
27

28           <sup>1</sup> A record of these payments may be found at Bates 034 which is one of the sealed  
exhibits attached to Plaintiff's motion to file under seal (ECF 33).

1 payment on February 26, 2016. Then, NBF calculated the interest through January 5, 2017,  
2 the date of the initial communication from NBF to Ms. Urbina, at the statutory legal rate of  
3 5.5% in 2016 and 5.75% in 2017, which totaled \$29.07 as accrued interest.

4 13. NBF was not entitled to assess any pre-judgment interest under NRS 99.040  
5 for the following reasons:

6 A. Tahoe Fracture Clinic's EOB reflects the fact that the contract for services  
7 is a book account as that term is defined by NRS 99.040(3). Thus, NRS  
8 99.040 does *not* allow the assessment of pre-judgment interest on book  
9 accounts unless the book account has been settled.

10 B. The performance called for in the contract does not state a value that is  
11 stated in money or is ascertainable by mathematical calculation from a  
12 standard fixed in the contract or from established market prices of the  
13 subject matter.

14 C. *Only* the Trial Court may determine the time upon which performance  
15 became due. And that can only be done at the trial upon the cause of  
16 action. NBF may not unilaterally determine when performance is due and  
17 demand interest from that date.

18 14. Even if NBF was allowed to assess interest under NRS 99.040, NBF  
19 calculated interest on the wrong amount since Tahoe Fracture Clinic was not owed \$614.52 as  
20 of February 26, 2016.

21 15. Even if NBF was allowed to assess interest under NRS 99.040, NBF  
22 calculated interest on the wrong start date since Ms. Urbina's last payment was made on  
23 August 12, 2016, not February 26, 2016 as stated by NBF in its second affirmative defense.

24 16. NBF's error with respect to the wrong principal balance and the incorrect  
25 commencement date caused it to demand a greater amount of interest from the Plaintiff than  
26 could have been owed, even if NRS 99.040 were applicable, which it is not.

27 **CAUSES OF ACTION**

28 **First Claim for Relief**

**False Representations of Amount of Debt - §1692e(2)**  
**NRS 99.040**

17. The Plaintiff alleges, realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.

18. Ms. Urbina's two contracts for medical services only provided that she was financially responsible for all charges whether or not paid by said insurance.

19. The performance called for in each contract does not list a value that is stated in money or a value that is ascertainable by mathematical calculation from a standard fixed in the contract or from established market prices of the subject matter.

20. On September 23, 2016 Tahoe Fracture Clinic sent Ms. Urbina an EOB. The EOB is a book account as that term is defined under NRS 99.040(3).

21. On January 5, 2017 NBF sent Ms. Urbina a collection letter that demanded a principal of \$614.52 plus \$29.07 of interest for a total of \$643.59.

22. NBF has admitted that it had calculated interest from February 26, 2016, through January 5, 2017 at prime plus two percent in accordance with NRS 99.040.

23. NRS 99.040 does not authorize the assessment of pre-judgment interest on a book account.

24. NRS 99.040 does not authorize the assessment of pre-judgment interest where the contract does not provide for the payment of a definite sum of money, or the value of performance to be rendered under the contract is not stated nor ascertainable by mathematical calculation from a standard fixed in the contract or from established market prices.

25. Under NRS 99.040 NBF is not allowed to select the date performance is due. That function is reserved for the trial court at the trial on the cause of action.

26. NBF represented in its January 5, 2017 letter that it was entitled to interest that was not authorized by statute.

27. NBF has violated 15 U.S.C. §1692(e)(2)(A) by making a false representation of the character, amount, and legal status of this debt.

1           28.    The remedy for these actions is the greater of actual damages or statutory  
2 damages in the amount of \$1,000.00, per offense, subject to the limitations imposed by 15  
3 U.S.C. §1692k(a).

4                           **Second Claim for Relief**

5                           **Threatening to Take Prohibited Action - §1692e(5)**

6                                   **NRS 99.040**

7           29.    The Plaintiff alleges, realleges and incorporates by reference each and every  
8 allegation contained in the preceding paragraphs.

9           30.    Based upon the nature of the contract between Ms. Urbina and Tahoe Fracture  
10 Clinic, NBF was not entitled to assess pre-judgment interest under NRS 99.040.

11           31.    NBF sent a collection letter to Ms. Urbina dated January 5, 2017 that said it  
12 was entitled to collect pre-judgment interest on the principal owed to Tahoe Fracture Clinic,  
13 when in fact the Defendant was prohibited under state law from assessing pre-judgment  
14 interest.

15           32.    NBF has violated 15 U.S.C. §1692e(5) by threatening to take any action that  
16 cannot legally be taken.

17           33.    The remedy for these actions is the greater of actual damages or statutory  
18 damages in the amount of \$1,000.00, per offense, subject to the limitations imposed by 15  
19 U.S.C. §1692k(a).

20                           **Third Claim for Relief**

21                           **Deceptive means to collect - §1692e(10)**

22                                   **NRS 99.040**

23           34.    The Plaintiff alleges, realleges and incorporates by reference each and every  
24 allegation contained in the preceding paragraphs.

25           35.    NBF sent a collection letter to Ms. Urbina dated January 5, 2017 that said it  
26 was entitled to collect pre-judgment interest on the principal owed to Tahoe Fracture Clinic,  
27 when in fact the Defendant was prohibited under state law from assessing pre-judgment  
28 interest.

1           36. NBF has violated 15 U.S.C. §1692e(10) by the use of false representations to  
2 collect or attempt to collect any debt

3           37. The remedy for these actions is the greater of actual damages or statutory  
4 damages in the amount of \$1,000.00, per offense, subject to the limitations imposed by 15  
5 U.S.C. §1692k(a).

6                           **Fourth Claim for Relief**

7                           **Deceptive means to collect - §1692f(1)**

8                           **NRS 99.040**

9           38. The Plaintiff alleges, realleges and incorporates by reference each and every  
10 allegation contained in the preceding paragraphs.

11           39. NBF sent a collection letter to Ms. Urbina dated January 5, 2017 that said it  
12 was entitled to collect pre-judgment interest on the principal owed to Tahoe Fracture Clinic,  
13 when in fact the Defendant was prohibited under state law from assessing pre-judgment  
14 interest.

15           40. NBF has violated 15 U.S.C. §1692f(1) in that it has attempted to collect a debt  
16 that is not authorized under Nevada law.

17           41. The remedy for these actions is the greater of actual damages or statutory  
18 damages in the amount of \$1,000.00, per offense, subject to the limitations imposed by 15  
19 U.S.C. §1692k(a).

20                           **PRAYER FOR RELIEF**

21           **WHEREFORE**, The Plaintiff respectfully prays the judgment be entered against the  
22 Defendant for the following:

23           1. With respect to the First Claim for Relief, actual damages in an amount to be  
24 proven at trial, statutory damages pursuant to 15 U.S.C. §1692k(a) in the amount of \$1,000.00  
25 per offense, subject to the limitations imposed by 15 U.S.C. §1692k(a);

26           2. With respect to the Second Claim for Relief, actual damages in an amount to be  
27 proven at trial, statutory damages pursuant to 15 U.S.C. §1692k(a) in the amount of \$1,000.00  
28 per offense, subject to the limitations imposed by 15 U.S.C. §1692k(a);

1           3.       With respect to the Third Claim for Relief, actual damages in an amount to be  
2 proven at trial, statutory damages pursuant to 15 U.S.C. §1692k(a) in the amount of \$1,000.00  
3 per offense, subject to the limitations imposed by 15 U.S.C. §1692k(a);

4           4.       With respect to the Fourth Claim for Relief, actual damages in an amount to be  
5 proven at trial, statutory damages pursuant to 15 U.S.C. §1692k(a) in the amount of \$1,000.00  
6 per offense, subject to the limitations imposed by 15 U.S.C. §1692k(a);

7           5.       For such other and further relief as may be just and proper.

8                   Dated: This \_\_\_\_\_ day of \_\_\_\_\_, 2018

9  
10       By:

By:

11       /s/ Michael Lehnars, Esq.  
12       Michael Lehnars, Esq.  
13       429 Marsh Ave.  
14       Reno, Nevada 89509  
15       Nevada Bar Number 003331

16       /s/ Christopher Burke, Esq.  
17       Christopher Burke, Esq.  
18       702 Plumas St.  
19       Reno, Nevada 89509  
20       Nevada Bar Number 4093